

In re ) Fair Hearing No. 8937  
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Appeal of )

The petitioner appeals a decision by the Department of Social Welfare that he is ineligible for Food Stamps and Supplemental Fuel Assistance.

1. The petitioner, who is divorced, lives with his three children.

2. The petitioner is employed by a manufacturer and during the month of October, which was a typical employment month for him, he received \$1,165.00 as gross wages.

3. The petitioner also has self-employment income from a seasonal antique business operated by his thirteen-year-old daughter. From July 1, 1988 through September 12, 1988, he made \$633.00, 20% of which was given to his daughter as her share. The business has been closed since September 12, 1988, and is not expected to reopen until next summer, both due to a seasonal lack of demand, and the school attendance of the child who operates the business.

4. Under a Superior Court Order, the petitioner is to receive \$73.50 per week, or \$292.80 monthly, as child support for all three children from his ex-wife.

5. Under that same order, the petitioner is required to pay his ex-wife \$240 per month for fifteen years in payment of a \$30,000.00 promissory note he executed in his ex-wife's favor as her share of the value of the family's home. There is no other lien or mortgage on the property.

6. The petitioner and his ex-wife have agreed between them that the ex-wife will offset the \$240 owed to her monthly from her child support obligation and that one payment, representing the difference between those figures, \$52.80, will be sent by the ex-wife to the petitioner each month.

7. The petitioner has received the \$52.80 child support payment on a fairly regular basis from his ex-wife.

8. On November 4, 1988, the petitioner applied for Food Stamps and Fuel Assistance which application was denied November 29, 1988, due to excess income. He requested reconsideration and was denied again on December 8, 1988. His appeal arises from that denial.

9. The notice sent to him on December 8, 1988, gave him the following information:

FOOD STAMPS:

Your application for food stamps has been denied for November, 1988 because:

Your income is more than the department allows for a household of your size. See "How your benefits were figured" (FSM 273.10, 273.9).

FUEL:

Your application for fuel has been denied because:

Your income is more than the department allows for a household of your size. (WAM 2904.1).

You may reapply if your situation changes.  
You may also apply for emergency fuel benefits if you have a heating crisis.

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How your benefits were figured for November, 1988.

FOOD STAMPS

Gross earned income	+\$	1323.36
Unearned income	+\$	292.80
FS Income	=\$	1616.16

Benefits for 4 person(s) with \$ 1616.16 Income	=\$	0.00
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Maximum Gross Income for 4 people	=\$	1263.00
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Some numbers may be rounded according to program rules.

10. The \$1,323.36 figure under "gross earned income" was arrived at by adding \$1,165.00 from his employment wages to \$158.36 which was the amount the department calculated was attributable on a monthly basis from the self-employment figure, a sum purportedly arrived at by dividing \$633 by 5 (the number of months since July 1 when the business opened). The latter calculation assumed that the self-employment income was from an ongoing business.

11. The "unearned income" figure, \$292.80, represents the Court ordered weekly support amount of \$73.20 multiplied by four weeks to obtain a monthly figure.

12. The department takes the position that the total of all the petitioner's income, \$1,616.16, exceeds the maximum gross income for a 4 person family which is \$1,263.00. It also takes the position that the \$1,616.16 when adjusted according to the regulations, failed the net

income test for fuel assistance. In its calculations, the department considered the petitioner's Court ordered payments to his ex-wife of \$240.00 per month as a shelter expense.

13. The petitioner takes the position that his self-employment income from his summer business should not be counted as current income and that only the \$52.80 he actually receives each month as child support should be counted as income, rather than the full Court ordered amount.

ORDER

The department's decision is affirmed.

REASONS

I. FOOD STAMPS

In determining eligibility for Food Stamps, the department's regulations require comparison of the applicant's "household income"<sup>1</sup> to a gross income eligibility standard. See F.S.M. § 273.9a.1. The maximum gross income for a four person non-elderly, non-disabled household is \$1,263.00 per month. Welfare Procedures Manual P-2590C. "Household income" is defined in the regulations in pertinent part as follows:

b. Definition of Income

Household income shall mean all income from whatever source excluding only items specified in paragraph (c) of this section.

1. Earned income shall include:

- (i) All wages and salaries of an employee

(ii) The gross income from a self-employment enterprise, . . .

2. Unearned income shall include, but not be limited to: . . .

(iii) Support or alimony payments made directly to the household from nonhousehold members . . .

c. Income Exclusions

Only the following items shall be excluded from household income and no other income shall be excluded:  
. . .

1.(iv)C. Money deducted or diverted from a court-ordered support or alimony payment (or other binding written support or alimony agreement) to a third party for a household expense shall be considered as income. However, payments specified by the court order or other legally binding agreement to go directly to the third party rather than to the household, and support payments not required by a court order or other legally binding agreement (including payments in excess of amount specified in a court order or written agreement) which are paid to a third party rather than the household shall be excluded as a vendor payment, even if the household agrees to the arrangement.  
. . .

8. The earned income (as defined in paragraph (b)(1) of this section) of children who are members of the household, who are students at least half time, and who have not attained their 18th birthday . . . F.S.M. § 273.9.

Under the regulations, the petitioner's gross earned income from wages as another's employee, \$1,165.00 per month, were indisputably properly counted. The issue is whether the full amount of the Court ordered support payment should have been counted under these regulations and whether the self-employment income from last summer should have been included.

The regulations clearly contemplate that support

payments made directly to the petitioner's household from a non-household member, in this case his ex-wife, be included as income. The petitioner argues that all he gets from his ex-wife of the \$292.80 per month Court ordered support is \$52.80, making the lower figure the appropriate one to use.

If, in fact, he only got \$52.80 because his wife just failed to give him the entire amount he would be right. However, in this case, the petitioner does not actually see the entire amount because he has authorized his ex-wife to keep all support payments due over \$52.80 per month in payment of a Court ordered debt he has to her of \$240.00 per month. If the parties were strictly following the Court's order, the petitioner would send his ex-wife \$240 and she would send him \$292.80 each month. While their method of achieving this same net result (sending only the difference) may be convenient for them, it cannot defeat the clear characterization of these funds by the Court. The regulations only exempt support payments which are diverted by a Court order, or the like, to a third party from inclusion as income. That is not the case here and so it must be concluded that the department properly considered the entire \$292.80 as income to the petitioner.<sup>2</sup>

The petitioner's monthly gross wages and child support added together equal \$1,457.80 which alone is over the four person household income maximum set out above. Therefore, it is not necessary to delve deeply into the legality of including the \$633 self-employment income. However, as the

petitioner is close to the maximum level and may face a decrease in wages or child support thus making this a future issue, a brief discussion of that issue is appropriate.

At least by the time of the hearing, the petitioner presented convincing evidence that the business was suspended and no income from that source which was earned prior to his application should have been attributed to him for the coming certification period unless it was being used to anticipate income for next summer, in which case the \$633 would have to be averaged over all the months (6 or 12) of the certification period, or counted during those months only when it was expected to be actually received.<sup>3</sup> See generally F.S.M. § 273.10(c)(1), (2) and (3). Finally, the income which was actually earned by the petitioner's 13 year old student-daughter, approximately \$126.00 of the \$633 total, would have to be totally excluded under F.S.M. § 273.9(c)(8) set out above.

## II. FUEL ASSISTANCE

The regulations in the fuel assistance program similarly determine eligibility based on household income which provides in pertinent part as follows:

### Definition of Income

Household income is all income of every household member from whatever source, excluding only items specified in Section 2904.3.

Earned income includes, but is not limited to:

1. Gross wages and salaries.

2. Training allowances form vocational and rehabilitative programs, to the extent they are not reimbursement or excluded under Section 2904.3.
3. Self-employment income, defined as gross income (including rental income and the total gain from sales of capital goods or equipment) less the costs of doing business. For all households receiving self-employment income the Department will calculate the self-employment income as follows:

- a. Annualizing self-employment income.

Self-employment income which represents a household's annual income shall be annualized over a 12-month period even if the income is received within only a short period of time during that 12 months. For example, self-employment income received by farmers shall be averaged over a 12-month period, if the income is intended to support the farmer on an annual basis. This self-employment income shall be annualized even if the household receives income from other sources in addition to self-employment.

Self-employment income which is received on a monthly basis but which represents a household's annual support shall normally be averaged over a 12-month period. If, however, the averaged amount does not accurately reflect the household's actual monthly circumstances because the household has experienced a substantial increase or decrease in business, the department will calculate the self-employment income based on anticipated earnings.

Self-employment income which is intended to meet the household's needs for only part of the year shall be averaged over the period of time the income is intended to cover. For example, applicants who are self-employment only in the winter and derive their income from other sources during the balance of the year shall have their self-employment income averaged over the winter months rather than a 12-month period.

If a household's self-employment enterprise has been in existence for such a short time that there is insufficient information to



make a reasonable projection for the heating season, the household may be granted with the understanding that they will report changes on a monthly or bimonthly basis.

b. Determining monthly income from self-employment.

For the period of time over which self-employment income is determined, the department will add all gross self-employment income (including capital gains), exclude the cost of producing the self-employment income, and divide the self-employment income by the number of months over which the income will be averaged.

For those households whose self-employment income is not averaged but is instead calculated on an anticipated basis, any capital gains shall be reported as a change of circumstance and divided by 12. This monthly amount shall be used in computing monthly income during the remaining months of the fuel assistance benefit period. The department will add this known monthly amount of capital gains to the anticipated monthly self-employment income, and subtract the cost of producing the self-employment. The cost of producing the self-employment income shall be calculated by anticipating the monthly allowable costs of producing the self-employment income.

The monthly net self-employment income shall be added to any other earned income received by the household. The total monthly earned income, less the 20 percent earned income deduction, shall then be added to all monthly unearned income received by the household.

Unearned income is the actual payment received from sources which include, but are not limited to: . . .

3. Support or alimony payments made directly to the household from non-household members.

W.A.M. § 2904.2.

After all this income is added up, the fuel assistance regulations unlike the Food Stamp regulations, automatically

exclude "20 percent of gross earned income from self-employment". W.A.M. § 2904.3(1). Similar to the Food Stamp regulations, the fuel assistance program also excludes "earned income of a child under age 18 who is attending school at least half time and living with a parent or living with relatives in unemancipated minor status as a member of the household." W.A.M. § 2904.2(12).

To establish eligibility, a household of four must establish that its excludible income (as set out above) does not exceed \$1,200 per month. W.A.M. § 2904.1. In this case, setting aside for the moment the petitioner's reputed income from self-employment, it must be found that the petitioner has includible "earned income" of \$1,165.00 per month from his wages which is subject to a 20 percent, or \$233.00, exclusion under the regulations, leaving \$932.00 in countable income. For reasons set out in the Food Stamp eligibility analysis, the entire Court ordered \$292.80 in monthly child support must be included as "unearned income".

When these two are added together, a sum of \$1,224.80 is obtained. That amount is, unfortunately, \$24.80 over the maximum, rendering the petitioner ineligible even without considering any potential self-employment income.

Therefore, it must be concluded that the department was correct in its finding that the petitioner was not eligible for Fuel Assistance. The petitioner should be aware that his eligibility for fuel assistance is very close and that

even a slight decrease in income may change the result. He is encouraged to reapply if he has any decrease whatsoever.

In addition, maximums are frequently raised so he should also check periodically to see if he might have become eligible by this means. And, finally, there is also an emergency fuel program for families with a heating crisis for which he may be eligible.

Though the petitioner did not raise the issue, the denial notice sent to him for his fuel assistance only stated that he had too much income and did not tell him how that conclusion was reached either by accompanying calculations or explanations. Even at the hearing, the worker involved could not provide the figures used in making the calculations for Fuel Assistance eligibility. Such treatment is unfair to the applicant and unfair to the reviewing Board. Each applicant should be provided with information on how his or her eligibility is calculated and all workers must come to hearings prepared to show their calculations to the Board's hearing officers.

#### FOOTNOTES

<sup>1</sup>Households containing elderly, disabled and ANFC-related families fall under a different standard. See F.S.M. § 273.9a.

<sup>2</sup>It should be noted that the petitioner's obligation of \$240.00 per month was consistent with this view, considered a housing expense, even though he did not actually send it to his ex-wife, the holder of the lien on his house.

<sup>3</sup>The calculations used by the department which averaged the \$633 over 5 months were, in addition, mathematically incorrect,  $\$633 - 5 = \$126$  not \$158. See Finding 10.